

## SECTION V.

### Construction Subcontracts

As discussed in Section IV, it is important to understand why any overall disparities in utilization of minority- and women-owned firms may be occurring and to explore whether there may be neutral explanations for the disparities. This research can also identify potential remedies for any disparities, first considering measures that are race- and gender-neutral. BBC combined qualitative and quantitative information to explore these issues.

Section V examines MBE/WBE opportunities in construction subcontracting. BBC begins here because past race- and gender-conscious remedies under the Federal DBE Program were primarily focused on DBE participation as subcontractors in construction contracts.

Section VI analyzes MBE/WBE participation as prime contractors in ITD construction contracts. Sections VII and VIII perform similar analyses for engineering-related subcontracts and prime contracts.

#### **Information on Subcontracting in the Transportation Construction Industry**

The study team collected qualitative information concerning potential barriers to MBE/WBE participation as subcontractors in transportation construction contracts through in-depth interviews with minority-, women- and majority-owned firms as well as representatives of trade associations.<sup>1</sup> BBC also included questions regarding work with ITD and in the Idaho marketplace at the end of the Availability Survey. In addition, BBC examined public hearing testimony received after publication of a preliminary disparity study report. Some of these results are summarized here. Appendix I provides much more information from the in-depth interviews. Appendix F includes results from the Availability Survey.

**Public sector subcontracting work.** A number of MBE/WBEs and majority-owned firms reported good experiences working with ITD and other public sector agencies.

Several interviewees said that public sector subcontracting experience, sometimes gained through the DBE Program, led to other opportunities in the public and private sectors. Other interviewees did not see that ITD experience led to other work.

**Why many minority- and women-owned firms focus on subcontracting when pursuing public sector work.** Many of the minority and women business owners completing in-depth interviews in this study reported that they work as both prime contractors and subcontractors. They may work as subcontractors to perform a specialized component of a large project.

Several MBE/WBE businesses interviewed reported that they exclusively operate as subcontractors because “it’s a lot less hassle.” Representatives from two white female-owned subcontractors noted bonding as a constraint to working as a prime contractor in the public sector. Several subcontractors

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<sup>1</sup> Most firms working on an ITD construction project (other than the prime) are deemed by ITD to be “subcontractors.” This includes construction firms, suppliers and truckers (unless the prime hires the trucker as an owner/operator or under a lease agreement).

offered that they do not have the experience to perform work as a prime. These barriers to prime work in the public sector drive some firms into subcontract roles. Section VI, which follows, describes barriers to participation as prime contractors in ITD and other public sector work.

**Methods to identify subcontracting opportunities.** ITD makes extensive efforts to publicize construction contracting opportunities. ITD publishes requests for bids in newspapers, a monthly ITD newsletter and on the ITD website. ITD provides 90-day forecasts whereby ITD informs contractors of jobs that will be let within the next 90 days. ITD also mails and emails information to the list of registered contractors and those on the bidder list. The information ITD provides through these sources includes the work items involved in a particular project, the location of the project, time frame for completing the project, and in the past, information on any DBE goal for the contract.

ITD also uses 32 plan centers throughout the state. Notices of bids are sent to Intermountain Contractor. Other organizations also publish information on ITD opportunities and planholders.

The information on the ITD website provides who is bidding and which contractors purchased a set of plans. This information is passed along to DBEs within two to three weeks before the bid date. ITD lists all work items for each contract, identifies the resident engineers that can be contacted directly for each project, and, in the past, provided any requirement for DBE utilization.

Firm owners reported getting information through each of these sources. They generally reported that it was easy to learn of ITD opportunities and the prime contractors bidding on the work. Some interviewees suggested ways to enhance the flow of bid information, including passing along bid opportunities to TERO offices. One contractor noted that not everyone has Internet access, and that ITD needed to do more to distribute information on contracting opportunities. One organization providing outreach to small businesses would like ITD to set up video conference discussions every two weeks where DBEs could ask the DBE Support Services Office questions regarding the DBE Program or address concerns regarding current bids or projects.

**Lists of potential subcontractors.** ITD maintains a DBE directory and makes it available to prime contractors and others in both hard copy form and on the ITD website. Prime contractors can call ITD for names of DBEs that can do certain types of work. ITD also assists primes in setting up advertisements on the EEO website to solicit DBEs for price quotes. Several contractors and subcontractors said that the directory and website are helpful in identifying potential subcontractors. Other contractors said that Idaho is a small state and everyone knows everyone, so they just rely on word of mouth to find DBEs (or already know them).

A few prime contractors and subcontractors knew of a DBE list but had not used it. Several interviewees were not familiar with the list (including one trade association representative).

**Non-bidders plans.** DBEs can request “non-bidders plans” (or free plans) on a particular job so that they can review them and submit price quotes to primes who have expressed interest in a particular RFP. ITD maintains a list of all the DBEs that have contacted it for non-bidders plans, which it provides to primes who wish to know which DBEs have expressed interest.

A number of contractors were familiar with this ITD service.

**Restriction on firms working as subcontractors on ITD construction projects.** Compared with bidding on ITD contracts as a prime contractor, there are relatively few requirements to bid and perform work as a subcontractor. ITD has very few requirements concerning subcontractors that may work on its projects and how subcontractors are selected:

- Construction trade subcontractors must have appropriate public works and contractors licenses;
- Subcontractors must not be debarred from doing business with the federal government or with ITD;
- The project needs to be bonded but all of the bonding can be provided by prime contractors; and
- Other contract provisions between ITD and the prime contractor often flow down to subcontractors, and primes may put in additional conditions.

Prime contractors do not need to have open solicitation of subcontractors for price quotes, nor must they select the lowest bidder. On ITD federally-funded contracts, any requirements relating to opening subcontracting opportunities to DBE firms were discontinued in January 2006.

By state law, each prime bidder must identify the subcontractors that will be involved in electrical, heating, plumbing and HVAC work at time of bid. Other subcontractors need not be identified with the prime contractor's bid. ITD only requires identification of subcontractors after contract award. Bid shopping by prime contractors was widely reported in the industry. For example, a WBE subcontractor stated that when she first started her business in 1996, a person at ITD told her to hold her bid until the day before in order to avoid bid manipulation or bid shopping.

**Prime contractor solicitation of subcontractors for quotes.** Since January 2007, ITD has sometimes included an aspirational DBE goal in the bidder's package as an "encouragement" for DBE participation. Nevertheless, prime contractors are under no obligation to solicit quotes from any particular subcontractor.

**Effect of the past DBE contract goals program.** Several interviewees reported that prime contractors frequently solicited them for projects with DBE contract goals and less often or never for other projects. Other representatives of MBE/WBE construction firms said that they have opportunities on projects without goals.

Several MBE subcontractors reported that they used to receive work due to their DBE status, but feared that contractors will no longer give them subcontracting opportunities after ITD discontinued the DBE contract goals program. They also reported that they had yet to see this change.

**Preferred areas to meet DBE goals.** One interviewee stated that many prime contractors in the construction industry only wanted a DBE flagger or fencer to meet DBE requirements and were not interested in other types of firms. Because of these limited opportunities he stopped marketing to construction prime contractors. Other prime contractors confirmed that the areas that they solicit DBE subcontractor participation are relatively narrow (e.g., urban gutter work, painting, landscaping and traffic control for one prime, even though he subcontracts other types of work). A trade association representative indicated that DBEs tend to specialize in certain areas where they are needed (guardrail, landscaping, flagging). This representative said that it was easy for prime contractors to meet DBE goals using subs from these disciplines.

The study team also received feedback that prime contractors took “the easy way out” by working with the same DBEs with whom they are familiar (and not liking to venture out and give new firms a chance). One interviewee suggested that ITD organize more “meet and greet” type activities to facilitate meetings between prime contractors and subcontractors.

**Good faith efforts to meet goals.** Prior to January 2006, prime contractors were required to meet DBE goals on federally-funded construction contracts with goals or make good faith efforts to meet the goals. After January 2007, ITD sometimes has included an aspirational DBE goal in project bid packages, but contractors do not need to meet the goal or show good faith efforts to close.

As reported in Appendix I, MBE/WBEs, trade associations and majority-owned firms indicated that some prime contractors abused the past good faith efforts process. Some interviewees said that they learned that prime contractors had reported to ITD that the prime had solicited their firm for a bid on an ITD project but in fact had never been contacted by the prime. One WBE subcontractor said that a prime reported to ITD that no DBE subcontractors had responded to its requests for bids when the WBE had in fact submitted a bid for that project.

Other interviewees indicated that prime contractors made calls to firms and trade associations only to document that they had recruited MBE/WBE subcontractors, with no intention of using these firms.

One trade association representative stated that the good faith effort requirement was an added expense to bid on ITD jobs. He reported that uncertainty as to what ITD would accept (what level of DBE participation, what level of good faith effort) was difficult for prime contractors.

ITD staff reported that when good faith effort was required, DBEs sometimes complained that prime contractors were not making genuine efforts to utilize DBEs. In some instances, DBEs complained that they were contacted too late for them to put together a price quote. They noted that in most cases prime contractors would meet the program requirements by showing DBE participation. Prime contractors have submitted (and ITD has approved) good faith efforts, but this occurred rarely.

**Front companies.** Some interviewees reported that they knew of “front companies” that fraudulently obtained DBE status.

**Good old boy network.** A substantial barrier reported by interviewees, both MBE/WBEs and majority-owned firms, was the perceived inability to “break into the market” due to pre-existing relationships between prime contractors and subcontractors. More than one white male-owned firm interviewed reported that a good old boy network exists in Idaho and people tend to work with preferred subcontractors and suppliers. Some contractors said that this is not because of race or gender, but that it is typical to work with people whom you have worked with for a long time.

A trade association representative stated that there is a good old boy network and there is “prevalent cronyism.” He said there are two restaurants where prime contractors in the transportation industry go to discuss business, and that being at one of these restaurants is better than any bidders list.

A representative of a minority-owned construction company said that there is a good old boy network and stated, “that’s one of my goals, is to be a part of that.” He added, “they’re all inter-married or relatives, and it’s just getting into those type of groups of people.”

A female owner of a construction company noted that there are favorite companies in the industry, but things are better than they used to be and that the good old boy network has changed for the “good.” An MBE construction subcontractor stated that he believes the good old boy network is fading away because “a lot of it is coming to light.” A female contractor said that the DBE Program in Idaho has helped to break down negative perceptions about women (she also urged reinstatement of project goals).

**Race and gender discrimination.** Several interviewees reported discriminatory treatment.

- An African American male-owned traffic control subcontractor stated that he has been pretty successful working on ITD jobs; however, he reported that it became very difficult for him when the definition of DBE was expanded to include women because they were then his direct competitors. He stated that many prime contractors would prefer to work with a white woman than with an African-American man, but “that’s life.”
- One white female-owned subcontractor stated that she generally had very positive experiences with ITD but that one new inspector was particularly hard on her (which she said was recognized by the prime contractor as well). She stated that the ITD inspector was “fine with all the men” but was “real hard on her.”
- A manager with a trade association representing general contractors and subcontractors stated, “Everyone will take anyone they can get with a qualified crew. If there is discrimination it is based on somebody who is undercapitalized and can’t deliver the job on time and on budget.” However, he observed, “If there’s anything at all, it’s that construction is a male-dominated area and so I would say females have had a bit of a “rough time”, “but that is based on perceptions of competence in construction.” He went on to say that one of the best contractors in the state is a female owner of construction subcontractor. “She probably had a tough time in the beginning.” He thinks she is too large now to be a DBE, “and she still gets used.”

The ITD EEO office receives complaints occasionally. According to ITD staff, almost all of these complaints are verbal and most of the time the caller simply wants a “sounding board.” The EEO office always offers the caller the option on filing a formal complaint. The callers seldom follow through. DBEs often report that they don’t feel they are being treated fairly or were yelled at. These are usually relationship issues with the prime. Very rarely do they say it is due to being a DBE, and the complaints generally are not alleging discrimination. When the EEO makes suggestions (i.e. filing against bond), some DBEs generally say, “No, I can’t do that, I can’t make waves.”

The ITD EEO office received one formal complaint from a DBE in the past year. His complaint was investigated by ITD and determined to be a non-issue. The DBE made a phone call to FHWA with a similar result. He did not formally appeal. This is the only formal written complaint ITD has received in the last several years.

**Potential stigma of DBE certification.** Several interviewees suggested that DBE certification carried a negative stigma. DBE status may carry a stereotype of being less competent.

**Prompt payment.** After each ITD payment is made (ITD progress payments are made about every two weeks), prime contractors are required to fill out a “certification of payment” form whereby they certify that they have paid their subcontractors. This is in a sense an “honor system” in that it is the prime’s word that the payment was made. Subcontractors must also submit verifications that they have paid all of their liabilities. Subcontractors provide the certification of payment form to the prime who provides it to ITD.

Many contractors reported that payment on ITD jobs, especially for subcontractors, was slow. Some expect a two to three month lag (or more) in receiving payment. Private sector work paid quicker. Other subcontractors reported that they received payment as subs on ITD projects relatively quickly. One subcontractor reported that ITD was a “stickler” in telling primes that when they are paid by ITD subs must be quickly paid. One trade association observed that miscommunication between the prime contractor and subcontractor as to the scope of work and completion of the work was a frequent barrier to receiving payment, but that prime contractors who are notoriously slow at paying have a difficult time finding subcontractors willing to work for them.

Comments from the Availability Survey were specific to ITD as well as prime contractors. One respondent stated, “ITD needs to reimburse companies faster.” “ITD does not enforce prompt payment clauses,” said another. One women-owned business representative stated, “It’s often extremely difficult to work as only a subcontractor because the prime contractors do not pay on time or reliably.”

Several firms recommended that ITD institute a process to inform subs when ITD has paid the prime.

**Treatment by ITD staff.** Many firms had favorable comments on how they were treated by ITD staff when performing work on ITD projects or interacting with DBE staff. Everyone at ITD is “just wonderful” in the words of one WBE subcontractor. A few contractors had mixed comments. One WBE business owner had negative comments about ITD inspectors.

**ITD technical assistance.** ITD offers a broad range of training, marketing and financial assistance, as discussed in detail in Section VI. Many MBE/WBE construction subcontractors are aware of this assistance and say they have benefited from these efforts (see Section VI).

## Effect of DBE Contract Goals on Utilization

BBC's analysis of projects with and without goals found that minority- and women-owned firms obtain a greater percentage of construction subcontract dollars without goals than with project goals.

**Federally-funded subcontracts before and after January 2006.** BBC compared MBE/WBE utilization on federally-funded contracts based on awards (at time of contract award and subcontractors added later in the contract) for 2002 through January 2006 and for February through December 2006. MBE/WBEs' and DBEs' share of subcontract dollars on federally-funded construction contracts increased after ITD discontinued setting DBE contract goals in January 2006:

- Prior to discontinuing the DBE contract goals program, MBE/WBEs obtained 25 percent of the subcontract dollars on federally-funded contracts. MBE/WBE utilization was 31 percent of subcontract dollars for February through December 2006.
- Certified DBEs received about 20 percent of construction subcontract dollars for 2002 through January 2006 and 29 percent after January 2006.

Figure V-1 examines these trends. Subcontractor utilization on federally-funded construction contracts after ITD discontinued setting DBE goals is based on 111 subcontracts awarded through the end of 2006. As such, one must be cautious in judging whether or not the data indicate a longer-term trend.

**Figure V-1.**  
**MBE/WBE share of subcontract dollars**  
**for federally-funded transportation**  
**construction contracts, before and**  
**after January 2006**

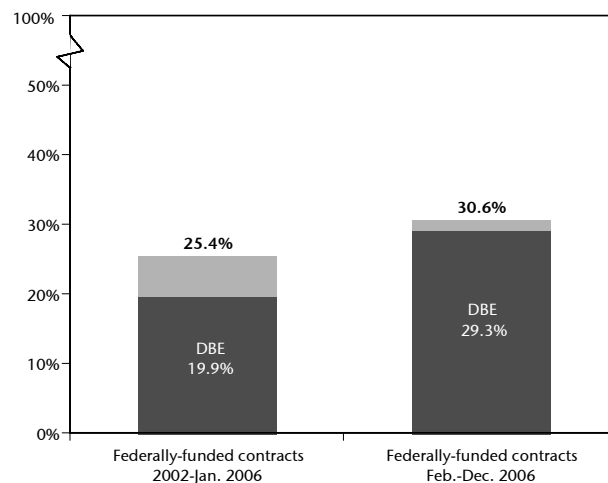
Note:

For more detail and for results by MBE/WBE group, see Figures E-55 and E-54 in Appendix E.

1,237 subcontracts for 2002–Jan. 2006 and 111 for Feb.–Dec. 2006.

Source:

BBC Research and Consulting from data on ITD contracts.



**State-funded subcontracts.** BBC also compared the MBE/WBE share of subcontracting dollars for federally-funded and state-funded construction contracts. The 691 subcontracts on state-funded projects provide a relatively large set of information on subcontracts without DBE goals.

MBE/WBEs obtained a larger amount of subcontract dollars on state-funded contracts than the federally-funded contracts for which DBE contract goals applied. MBE/WBEs were awarded 32 percent of subcontract dollars for state-funded construction contracts, similar to what was found for post-DBE goals federally-funded contracts.

DBEs obtained 19 percent of subcontract dollars on state-funded contracts, about the same as found for federally-funded contracts generally subject to DBE contract goals. Figure V-2 presents these results.

**Figure V-2.**  
**MBE/WBE share of subcontract dollars**  
**for transportation construction**  
**contracts, federal vs. state funding**

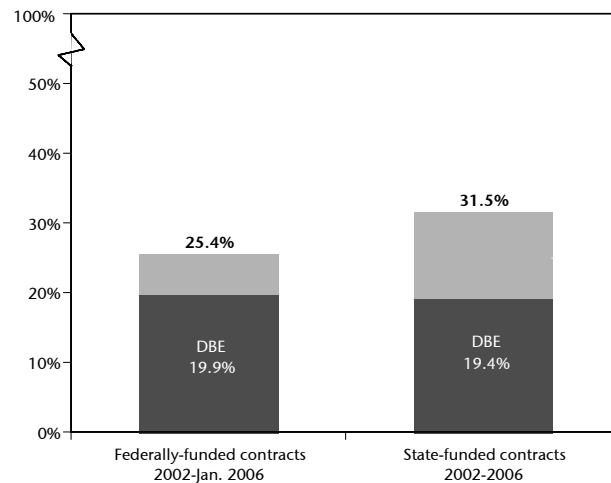
**Note:**

For more detail and for results by MBE/WBE group, see Figures E-55 and E-95 in Appendix E.

1,237 subcontracts on federally-funded contracts and 691 on state-funded contracts.

**Source:**

BBC Research and Consulting from data on ITD contracts.



**Utilization of firms by race and gender group.** Most of the construction subcontracts that went to MBE/WBEs and DBEs were to white women-owned firms. WBEs accounted for 22 percentage points of the 25 percent MBE/WBE subcontractor utilization for federally-funded contracts through January 2006. MBEs received 3 percent of subcontract dollars. Similarly, WBE utilization as subcontractors on state-funded contracts was about 27 percent while MBE utilization was 5 percent. MBEs obtained less than 1 percent of the subcontract dollars for federally-funded contracts after January 2006. Most of the dollars going to WBEs on federally-funded contracts were firms that were DBE-certified at the time of the contract.



Among MBEs, Native American-owned firms received the greatest share of subcontract dollars for federally-funded contracts before February 2006 and for state-funded from 2002 through 2006. There was very little utilization of Asian-Pacific American- and Subcontinent Asian American-owned firms, and no utilization of African American-owned firms on the subcontracts examined.

**Figure V-3.**  
**DBE and MBE/WBE share of subcontract dollars for**  
**transportation construction contracts, by race/ethnicity/gender**

	Federally-funded contracts		State-funded contracts 2002–2006
	2002–Jan. 2006	Feb.–Dec. 2006	
<b>MBE/WBEs</b>			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0	0.1
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.8	0.2	1.2
Native American-owned	<u>2.1</u>	<u>0.0</u>	<u>3.5</u>
<b>Total MBE</b>	<b>3.0%</b>	<b>0.2%</b>	<b>4.8%</b>
WBE (white women-owned)	<u>22.4</u>	<u>30.3</u>	<u>26.7</u>
<b>Total MBE/WBE</b>	<b>25.4%</b>	<b>30.6%</b>	<b>31.5%</b>
<b>DBEs</b>			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.1	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.8	0.2	0.2
Native American-owned	<u>2.1</u>	<u>0.0</u>	<u>2.7</u>
<b>Total MBE</b>	<b>2.9%</b>	<b>0.2%</b>	<b>2.9%</b>
WBE (white women-owned)	17.0	29.1	16.5
White male-owned DBE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<b>Total DBE</b>	<b>19.9%</b>	<b>29.3%</b>	<b>19.4%</b>

Note: Numbers rounded to nearest tenth of 1 percent.

For more detail, see Figures E-55, E-54 and E-95 in Appendix E.

1,237 subcontracts for 2002–Jan. 2006 federally-funded contracts, 111 for Feb.–Dec. 2006 federally-funded contracts, and 691 for state-funded contracts.

Source: BBC Research and Consulting from data on ITD contracts.

## Disparity Analysis

BBC performed a disparity analysis for construction subcontracts to determine whether there were any differences between MBE/WBE utilization and the availability of MBE/WBEs for these subcontracts.

**Federally-funded subcontracts before and after January 2006.** Utilization of white women-owned firms as subcontractors on federally-funded construction contracts exceeded or was roughly in line with what would be expected based on WBE availability to perform these subcontracts. Disparity indices for WBEs were 119 through January 2006 and 105 after January 2006.

On the other hand, there were substantial disparities for each minority group whether or not the DBE contract goals program applied.

**Exhibit V-4.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally-funded**  
**transportation construction**  
**subcontracts, 2002–Jan.**  
**2006 and Feb.–Dec. 2006**

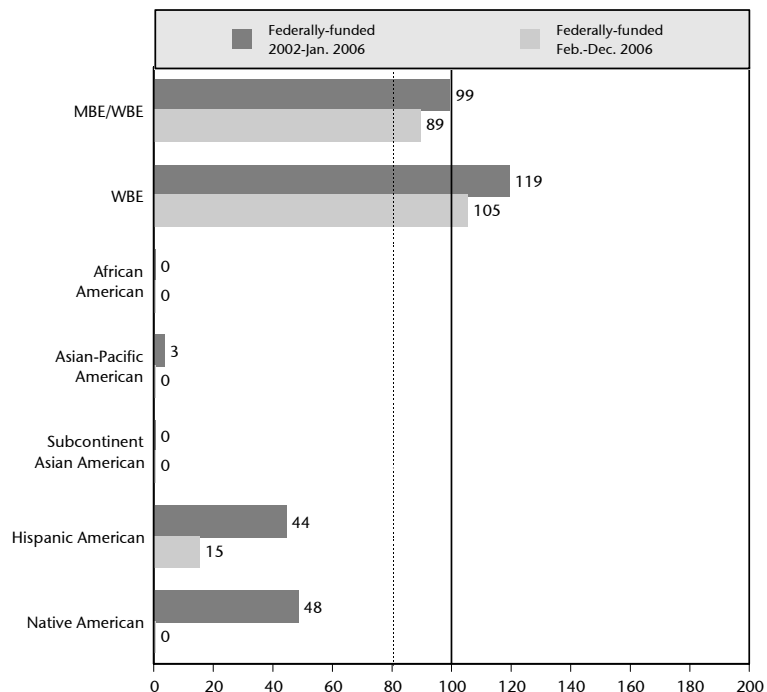
Note:

For more detailed information, see Figures E-55 and E-54 in Appendix E.

1,237 subcontracts for 2002–Jan. 2006 and 111 for Feb.–Dec. 2006.

Source:

BBC Research and Consulting.



**State-funded subcontracts.** Utilization of WBEs exceeded what would be expected based on availability for state-funded subcontracts. For each MBE/WBE, group disparity indices were the same or higher for state-funded subcontracts compared with subcontracts on federally-funded projects.

**Figure V-5.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally- and state-funded**  
**transportation construction**  
**subcontracts, 2002–Jan.**  
**2006 and 2002–2006**

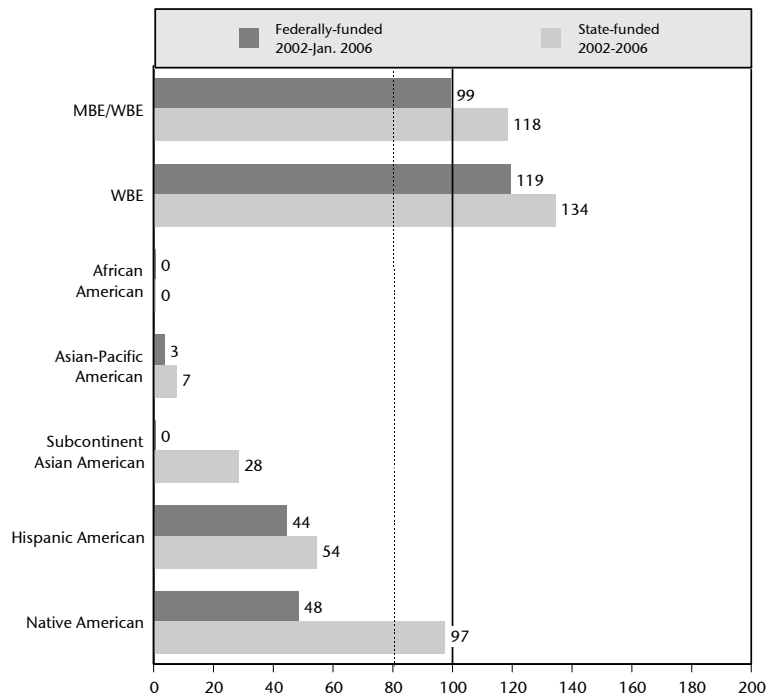
Note:

For more detailed information, see Figures E-55 and E-95 in Appendix E.

1,237 subcontracts for federally-funded contracts and 691 for state-funded contracts.

Source:

BBC Research and Consulting.



## Conclusions for Construction Subcontracting

Based on examination of subcontracting opportunities on ITD construction contracts, and review of qualitative information, BBC offers the following conclusions.

1. Several MBE/WBE subcontractors interviewed by the study team indicated a fear that they would not be solicited for subcontracting opportunities now that the old DBE contract goals program had been discontinued. Some indicated that the work they perform would now be self-performed by the prime contractor. Some of the subcontractors expressing these fears had not seen any decline in opportunities, however. In fact, the share of construction subcontracting dollars going to minority- and women-owned firms was greater on ITD projects without DBE goals than projects with goals. In part, this is explained by the greater relative availability of MBE/WBEs for non-goals projects. However, MBE/WBE utilization as a share of contract dollars increased for February through December 2006. There was no evidence of disparities for white women-owned construction subcontractors without the DBE contract goals. WBEs constitute most of the MBE/WBE firms available for these subcontracts.
2. Utilization of minority-owned firms is relatively low regardless of whether or not DBE contract goals were applied. BBC identified disparities between utilization and availability across MBE groups.
3. Interviewees including white men indicated that a good old boy network existed in the Idaho transportation contracting industry. This may affect subcontracting opportunities for firms that are not part of this network, including some minority- and women-owned firms.

4. ITD has implemented a strong array of efforts to encourage development of minority- and women-owned construction subcontractors and encourage participation in ITD projects. These efforts include continuing to publish recommended levels of participation for DBEs for certain federally-funded construction contracts. BBC's review of ITD's contracting processes found that information on subcontracting opportunities was readily available to MBE/WBEs and majority-owned firms. There may be opportunities to further address barriers to MBE/WBE development and to further address potential bid shopping and late payments for subcontractors on ITD jobs.

It does not appear that reintroduction of the former DBE goals program is needed at this time. ITD should monitor both DBE and MBE/WBE utilization as subcontractors on both federally- and state-funded projects. This information will be essential in gauging the success of ITD programs for subcontracting and determining whether or not ITD would need to reintroduce DBE contract goals at a future date (perhaps only for certain groups of DBE firms).

ITD should continue efforts to build capabilities of WBEs, and redouble efforts to assist minority-owned firms. Specialized assistance to reservation-based Native American-owned firms may be needed. ITD should consider holding mandatory pre-bid conferences for certain contracts as a forum to introduce subcontractors to primes. ITD should automatically notify first-tier subcontractors of ITD payment of prime contractors. This broad-reaching approach may be the best avenue to address long-term disparities in utilization of minority-owned businesses as subcontractors in ITD construction contracts.

In addition, ITD should track MBE/WBE utilization by specific prime contractors obtaining a large dollar volume of ITD construction contracts. If needed, ITD can further investigate whether there are particular barriers to use of minority- and women-owned firms for individual prime contractors. ITD has the authority to ensure that its prime contractors are not discriminating against potential subcontractors based on subcontractors' race, ethnicity or gender.

Finally, ITD could introduce contract requirements that a minimum percentage of the contract be subcontracted if it found that prime contractors were now self-performing most work items that had previously been subcontracted.